IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1241 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

YUNUS ALIAS MULLO JAMALBHAI LEELA

Appearance:

1. Criminal Appeal No. 1241 of 1992

Mr.I.M.Pandya, learned A.P.P. for Appellant No.

MS RUKHSANA M PATHAN for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/08/2004

ORAL JUDGEMENT

#. This appeal is preferred by the State under Section

378 of the Criminal Procedure Code, 1973 against the judgment and order of acquittal dated 24.09.1992 passed by the learned Chief Judicial Magistrate, Amreli in Criminal Case No.2063 of 1992.

#. The short facts of the case are that the respondent-accused was externed from Amreli, Rajkot, Junagadh and Bhavnagar for a period of two years. The respondent-accused was found in the city limit of Amreli District on 10.07.1992. Thus, according to the prosecution, the respondent-accused has committed offence punishable under Section 142 of the Bombay Police Act. After investigation, chargesheet was submitted and the respondent-accused pleaded not guilty to the charge and claimed to be tried. The learned Chief Judicial Magistrate, Amreli after hearing and appreciating the evidence, acquitted the respondent-accused for the offence with which he was charged, which has given rise to this appeal.

#. Mr.Pandya, learned A.P.P. for the State submitted that P.I.Shri Vaghela P.W.7 has stated that while he was on patrolling duty the respondent-accused was arrested. He submitted that though the two panchas have not supported the prosecution case, the learned Judge ought to have considered the fact that the respondent-accused was externed for a period of two years but he entered the city limit of Amreli district and thereby he committed the offence punishable under Section 142 of the Bombay Police Act. Therefore, the learned trial Judge ought not to have acquitted the accused. Though the respondent-accused was served, he chose not to remain present either in person or through advocate.

#. I have perused the order of the trial Court and material placed on record. Though the panchas admitted their signatures on the panchanamas, they have not supported the prosecution case. The prosecution could have examined other witnesses who were present at the time of arrest of respondent-accused, in support of the complaint. I am of the opinion that the High Court should be slow while interfering with the acquittal of any accused.

#. Looking to the facts and circumstances of the case, no interference is required at this stage and this appeal deserves to be dismissed and accordingly is dismissed.

(SHARAD D DAVE, J)

srilatha